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Citation: Stanton, J. ORCID: 0000-0001-5211-5617 (2014). The Big Society and community development: Neighbourhood planning under the Localism Act. *Environmental Law Review*, 16(4), pp. 262-276. doi: 10.1350/enlr.2014.16.4.225

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Link to published version: <http://dx.doi.org/10.1350/enlr.2014.16.4.225>

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The Big Society and community development: Neighbourhood planning under the Localism Act

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Keywords: localism, Big Society, community development, neighbourhood planning, decentralisation, engagement

Abstract: Bringing into force crucial aspects of the Coalition's 'Big Society', the Localism Act 2011 introduces changes to neighbourhood planning through which it seeks to decentralise power to the lowest possible level and afford local communities the opportunities to take the initiative with regards to developing local areas in line with local needs and issues. This article examines the neighbourhood planning provisions of the Act and considers the extent to which they achieve their aims and realise the objectives of the Big Society. It argues that, whilst seeking to decentralise power and empower communities to lead forward local development, the Act leaves a great deal of autonomy in the hands of central government and local authorities, meaning that the communities themselves are constrained by higher authority; it fails also to tackle sufficiently, issues relating to citizen and community engagement.

INTRODUCTION

In setting out the 'Big Society' in the spring of 2010, the Prime Minister, David Cameron, noted that the policy is 'about a huge culture change ... where people, in their everyday lives, in their homes, in their neighbourhoods, in their workplace ... feel both free and powerful enough to help themselves and their own communities'.¹ Central to this is the notion of community development: the policy is about improving quality of life and ensuring that local people can work to shape neighbourhoods and communities in ways that they want.² As Orme notes, the Big Society is 'a concept where "people will be free and powerful enough to help themselves and their own communities ... neighbourhoods in charge of their own destiny who feel if they club together and get involved they can shape the world around them"'.³

On this basis, the Big Society was intended to reflect a break from past practices, it being 'presented as a reaction to the claimed statist centralising policies of the previous Labour government ... [seeking to return the] initiative ... to grass roots level by promoting what

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1 David Cameron, *Big Society Speech* (Liverpool, 19 July 2010). Available at: www.gov.uk/government/speeches/big-society-speech. Last accessed 10 April 2014.

2 Ibid. See also: House of Commons Public Administration Select Committee, *The Big Society* (seventeenth report) (HC 2010–12, 901–I), p. 1.

3 E. Orme, 'Localism: Keeping it Local Again ... And Again ... And Again ... or Not?' (2012) 15(4) *Journal of Housing Law* 72 at 75, citing: B. Neill, 'Parish and town councils must be at the heart of the Big Society' in *What is Localism?* (National Association of Local Councils, London: 2010) 8.

is referred to as people power'.⁴ Such people- or community-led approaches are central to community development as past experience and existing research serve to demonstrate,⁵ though in recent decades there have been issues concerning the effective decentralisation of power with the aim of enhancing community regeneration.⁶ Whilst successive governments have constantly made promises to decentralise and have set out ways in which this could be realised, the results were often so prescriptive that centralised control generally remained. Labour's New Deal for Communities programme, for instance, though designed to promote 'a ... community-focused attitude to neighbourhood renewal',⁷ was described at the time as being 'community-led in the sense that government decides how the community will be involved, why they will be involved, what they will do and how they will do it'.⁸ As a consequence, attempts to harbour decentralised power and encourage community involvement in the process of regeneration generally proved difficult to achieve. Indeed, citing statistics that demonstrate a low level of participation across the NDC programme as a whole, Lawless *et al.* note that there is little evidence to suggest that the community-led nature of the programme, and its emphasis on participation, impacted positively on the achievement of its objectives.⁹

As part of the Big Society, therefore, a range of reforms and policies have been introduced, aiming to give communities more power, encouraging people to take up more active roles in local neighbourhoods, and setting out the transferral of power from central to local government.¹⁰ This article analyses these reforms, focusing in particular on provisions of the Localism Act 2011 introducing changes to neighbourhood planning. It analyses the extent to which these reflect the community-led approach that is so central to the government's localism agenda, exploring such themes as decentralisation and community engagement, and it considers the extent to which this impacts on community development.

- 4 P. Leyland, 'The Localism Act 2011: Local Government Encounters the "Big Society"' (2012) 4 *Istituzioni del Federalismo* 767 at 770–1, citing: C. Pattie and R. Johnston, 'How Big is the Big Society?' (2011) 64(3) *Parliamentary Affairs* 403 and P. Leyland, *The Constitution of the United Kingdom: A Contextual Analysis*, 2nd edn (Hart Publishing: Oxford, 2012) 286ff.
- 5 See, for instance, P. Foley and S. Martin, 'A New Deal for the Community? Public Participation in Regeneration and Local Service Delivery' (2000) 28(4) *Policy & Politics* 479; see also J. Stanton, *Democratic Sustainability in a New Era of Localism* (Routledge-Earthscan: Abingdon, 2014).
- 6 See, for instance, both Foley and Martin and Stanton, above n. 5. See also J.S.F. Wright, J. Parry, J. Mathers, S. Jones and J. Orford, 'Assessing the Participatory Potential of Britain's New Deal for Communities' (2006) 27(4) *Policy Studies* 347.
- 7 J. Stanton, 'Local Sustainable Development: Lessons Learned from the New Deal for Communities' (2012) 14(1) *Environmental Law Review* 26 at 26. For further discussion on the nature of the New Deal for Communities programme see: Social Exclusion Unit, *Bringing Britain Together: A National Strategy for Neighbourhood Renewal*, Cmd Paper 4045 (1998) 48; P. Lawless, M. Foden, I. Wilson and C. Beatty, 'Understanding Area-based Regeneration: The New Deal for Communities Programme in England' (2009) 47(2) *Urban Studies* 257 at 259 and the House of Commons Committee of Public Accounts, *An Early Progress Report on the New Deal for Communities Programme (Thirty-eighth Report)* (HC 2003–4, 492) 3.
- 8 See Wright, *et al.*, above n. 6 at 349. Research has shown that the New Deal for Communities programme was often called upon to prioritise centrally set targets at the expense of focusing on locally specific goals aligned with the achievement of regeneration. See also P. Lawless, 'Can Area-based Regeneration Programmes Ever Work? Evidence from England's New Deal for Communities' (2012) 33(4) *Policy Studies* 313 at 321, citing Neighbourhood Renewal Unit/Office of the Deputy Prime Minister, *Transformation and sustainability: Future support, management and monitoring of the NDC Programme*, Programme Note 25, (Neighbourhood Renewal Unit/Office of the Deputy Prime Minister: London, 2004). See also Stanton, above n. 5 at 127).
- 9 See Lawless, *et al.*, above n. 7 at 270.
- 10 Cabinet Office, *Building the Big Society* (Cabinet Office: London, 18 May 2010). Available at: www.gov.uk/government/publications/building-the-big-society. Last accessed 10 April 2014.

THE BIG SOCIETY AND NEIGHBOURHOOD PLANNING

On entering power in 2010, the Coalition Government was 'keen for communities and local organisations to take hold of the localism agenda and shape it to their own ends'.¹¹ Though this agenda was said to represent an uneasy compromise in terms of the Conservatives and Liberal Democrats' differing understandings of localism,¹² the themes at its heart demonstrate at least a common motivation; as Nick Clegg notes: 'Whatever the words we use, we are clear and united in our ambition to decentralise and disperse power in our society.'¹³ Indeed, the Coalition Agreement, set out at the start of the 2010 government, notes that the two parties:

share a conviction that the days of big government are over; that centralisation and top-down control have proved a failure. We believe that the time has come to disperse power more widely in Britain today; to recognise that we will only make progress if we help people to come together to make life better. In short, it is our ambition to distribute power and opportunity to people rather than hoarding authority within government.¹⁴

At the heart of the government's localism agenda and Big Society policy, then, is a clear desire and commitment to decentralise to the community level.¹⁵ Within this, there is also a shared understanding of the role that communities can play and the need for their empowerment. Indeed, the 'Essential Guide' to the Localism Bill lists empowering communities 'to do things their way' as a key action for decentralisation,¹⁶ and emphasises the importance the Coalition attributes to '[p]utting power into people's hands ... to help people to run their own [lives]'.¹⁷

The Coalition's localism agenda is defined, therefore, by themes of decentralisation and community empowerment. Despite underlying political differences, these are objectives to which both the Conservatives and Liberal Democrats are committed and which lie at

- 11 E. Lees, 'Localism and Environmental Law: Uneasy Bedfellows?' (2014) *Journal of Planning and Environmental Law* 176 at 179, citing House of Commons Communities and Local Government Committee, *Localism* (Third report) (HC 2010–12, 547).
- 12 This 'uneasy compromise' is widely discussed. Research highlights the balance to be maintained between national policy and appropriate decentralisation and questions whether the compromise exists in the form of the government 'not acting enough to push policies through', thus 'not fostering sufficient decentralisation to energise localities'. See P. John and L. Richardson, *Nudging Citizens Towards Localism?* (London: British Academy 2012) 7. Available at: www.britac.ac.uk/policy/Nudging-citizens-towards-localism.cfm. Last accessed 9 July 2014. In addition, an article published in 2010 acknowledges that whilst the Conservatives and Liberal Democrats were united by a liberalism that was suspicious of state power and were keen to restore civil liberties, wider democratic reform happened through an uneasy compromise, rather than by an agenda driven by conviction. See N. Pearce, 'Is the Coalition Government Truly Radical?' in *Our Kingdom: Power & Liberty in Britain* (2010). Available at: www.opendemocracy.net/ourkingdom/nick-pearce/is-coalition-government-truly-radical. Last accessed 9 July 2014.
- 13 HM Government, *Decentralisation and the Localism Bill: An Essential Guide* (DCLG: London, 2010). Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/5951/1793908.pdf. Last accessed 9 July 2014.
- 14 HM Government, *The Coalition: Our programme for government* (Cabinet Office: London, 2010) 7. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf. Last accessed 9 July 2014.
- 15 The essential guide to the Localism Bill stated that '[t]he Coalition is ... committed to *decentralisation*, which is the biggest thing that government can do to build the Big Society' (see HM Government, above n. 13 at 2).
- 16 Above n. 13 at 2 and 3.
- 17 Ibid. at 7. These are the words of Nick Clegg in the 'Essential Guide'. They echo, however, aspects of David Cameron's 2010 Big Society speech in which he emphasised the importance of creating 'communities with oomph – neighbourhoods who are in charge of their own destiny, who feel if they club together and get involved they can shape the world around them' (Above, n.1).

the heart of reforms seeking to encourage community-led development, as this section will now discuss.

DECENTRALISATION AND EMPOWERMENT

Through the government's policies, promises and in the Localism Act itself, this decentralisation and empowerment is attempted in a number of ways, including by a general power of competence for local authorities and a number of referenda provisions, aiming to give individuals more say over local issues. Reforms distinguish between the local authority level and, beneath this, the local community level, something that Jones and Stewart consider is not achieved with sufficient clarity.¹⁸ Nonetheless, this desire to acknowledge two separate layers was noted by David Cameron who, in explaining the Big Society in 2010, stated that '[w]e must push power away from central government to local government – and we shouldn't stop there. We should drive it down even further ... to what Phil Redmond has called the "nano" level ... to communities, to neighbourhoods and individuals'.¹⁹ This article, in considering neighbourhood planning, focuses primarily on this 'nano' level, discussing, in particular, the way in which communities relate to central and local government.

Reflecting and embodying the promises made as part of the Big Society, the neighbourhood planning provisions, and the community rights with which they are associated, came into force in April 2012. They set out fundamentally to change the way in which neighbourhoods could be developed, providing for a more prominent community role, 'with reduced interference from central government',²⁰ and affording the potential for greater citizen input. Indeed, in the government's own words, the new reforms were motivated by the realisation that '[p]eople around the country value and love the places they live in. They want great local public services, to protect the things that make their neighbourhood special and to help their community grow and develop in the right way'.²¹ Consequently, the new provisions were intended to provide localities with 'legal powers and new opportunities' to preserve and develop local areas.²² With this in mind, this section now sets out the details of these reforms and considers the way in which they fit within the broader planning framework. This lays the foundations for a later examination of the extent to which the neighbourhood planning provisions achieve the intended community focus and break from past issues affecting local development.

NEIGHBOURHOOD PLANNING AND THE 'REFORMED PLANNING SYSTEM'²³

Section 61E of the Town and Country Planning Act 1990, amended by Schedule 9 of the Localism Act 2011, introduces changes to neighbourhood planning procedures to the effect that a parish council or a neighbourhood forum can now 'initiate a process for the purpose of requiring a local planning authority ... to make a neighbourhood development

18 See G. Jones and J. Stewart, 'Local Government: The Past, the Present and the Future' (2012) 27(4) *Public Policy and Administration* 346 at 356.

19 Above n. 1.

20 DCLG, *Giving communities more power in planning local development*, 7 November 2012. Available at: www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development. Last accessed 10 April 2014

21 DCLG, *You've got the power: A quick and simple guide to community rights* (HMSO: London: September 2013). Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/244635/130924_You_ve_got_the_power_accessible.pdf. Last accessed 10 April 2014.

22 Ibid.

23 A phrase used in G. Parker, 'Neighbourhood Planning: Precursors, Lessons and Prospects' (2012) 13 *Supp Journal of Planning and Environmental Law* OP139 at OP140.

order ... [that] grants planning permission in relation to a particular neighbourhood area'.²⁴ The government notes that this will enable local communities to 'choose where they want new homes, shops and offices to be built [, to] have their say on what those new buildings should look like [and] grant planning permission for the new buildings they want to see go ahead'.²⁵ Once put together by parish councils or neighbourhood fora, overseen by the local planning authority, a neighbourhood plan can be put to a local referendum.²⁶ The impetus behind these new provisions is clear:

Rather than planning policies being imposed from above via regional spatial strategies to which local development plans had to conform and which have now been abolished, the aim is to develop planning policies from below – from neighbourhoods upwards to the local planning authorities ... local communities should be able to come together and decide for themselves whether and where new developments should go.²⁷

Since coming into force in spring 2012, the new neighbourhood planning procedures have been utilised by local communities across the UK, with Eden in Cumbria being the first example. There, following a referendum, 90% of voters approved a neighbourhood plan that had been produced by local people, for the benefit of the local area and wider community.²⁸ That plan sought 'to address several local challenges by allowing, amongst others, more affordable homes to be created by allowing more conversions and building on farms, and better broadband internet connection to be established'.²⁹ Though the extent to which the new provisions achieve the desired community focus will be discussed below, Eden's successful approval of the neighbourhood plan has led some to suggest that this new power has 'started a quiet revolution', providing 'a real opportunity for [local] people' to bring about the changes that 'they want to see make their community thrive'.³⁰ Indeed, Community Rights Minister, Don Foster, noted in the aftermath of Eden's referendum:

For too long communities have not had a big enough say in what happens in their local area, whether it be about what happens to local amenities, how local services are delivered, or how new development is planned.

We are taking action giving community, voluntary and charity groups the opportunity to take the initiative not just on how planning decisions are made, but also how local public services are run and new powers to help keep valued land and buildings such as the local pub, shop, library or football ground in community use.³¹

The neighbourhood planning provisions, therefore, were introduced amidst a great deal of promise. Designed to encourage local freedom and initiative, they seek to achieve more prominent decentralisation and greater empowerment, with the intention that communities can develop more in line with local issues and subject less to higher objectives and constraints. As McAuslan notes:

24 Section 61E(1) and (2) Town and Country Planning Act 1990, amended by Sch. 9, Localism Act 2011.

25 DCLG, *Giving people more power over what happens in their neighbourhood*, 7 November 2012, Available at: www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/neighbourhood-planning--2. Last accessed 10 April 2014.

26 Ibid.

27 P. McAuslan, 'Towards A Just Planning System: The Contribution of Law' (2013) 2 *Journal of Planning and Environmental Law* 145 at 150.

28 DCLG, *Historic first as neighbourhood plan is voted in by community*, 8 March 2013. Available at: www.gov.uk/government/news/historic-first-as-neighbourhood-plan-is-voted-in-by-community. Last accessed 10 April 2014.

29 Ibid.

30 Ibid. Nick Boles MP, Planning Minister.

31 Ibid.

[I]t is undeniable that over the years ... the planning system had become more and more centralised ... [and] less and less democratic with more power ... vested in planning officers, appointed planning bodies... inspectors and ... the judiciary. So a decisive step back from centralisation and a commitment to allow ordinary people ... to plan and decide on plans seems on the surface to be a clear commitment to the introduction of more justice into the system; a distribution of power to the people from the experts.³²

NEIGHBOURHOOD PLANNING'S PLACE AMONGST THE WIDER PLANNING FRAMEWORK

The changes to Neighbourhood Planning, therefore, have generally been met with a positive reception. Before analysing the extent to which the reforms achieve the community focus that is so important to the Big Society, however, and to understand better the context within which the provisions are placed, it is necessary first to examine the manner in which they sit with the existing and wider planning framework.

The prominence of plan-led development has increased significantly over the last 25 years with the Planning and Compensation Act 1991 and, later, the Planning and Compulsory Purchase Act 2004 setting out Development Plans as legal concepts, necessary to be followed wherever planning applications are made. These Development Plans are comprised of a number of different aspects,³³ including Local Plans³⁴ and Neighbourhood Plans,³⁵ with the recent inclusion of the latter being described as 'the biggest change to the planning system since its creation in its modern form 65 years ago'.³⁶ The Neighbourhood Plans, therefore, fit within and make changes to a well-established legal framework, adding a community focus to existing provisions and procedures.

Shortly after the Localism Act 2011, the government also published, in spring 2012, the National Planning and Policy Framework.³⁷ This was designed to outline their planning policies and to provide 'a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities'.³⁸ With the achievement of sustainable development at its heart,³⁹ the NPPF sets out national policies on a range of issues, covering matters such as housing, climate change, flooding, transport and planning.⁴⁰ With regards to the latter, it plays a key role in mapping out the way in which Neighbourhood Plans fit within the existing planning framework, requiring, for instance, that the policies and guidance set out in the NPPF 'be taken into account in the preparation of local and neighbourhood plans, and [are] a material consideration in planning

32 See McAuslan, above, n. 27 at 150.

33 See Planning Portal, DCLG, *The development plan*. Available at: www.planningportal.gov.uk/planning/applications/decisionmaking/devplan. Last accessed 9 July 2014.

34 'Local authorities' "Local Plans" set out 'the rules for how ... [a particular] area will develop over time' (DCLG, n. 20, above). They should be kept up-to-date and be in line with local needs, setting out the scope and nature of local development, in co-operation with neighbouring authorities and other organisations. See DCLG, *National planning policy framework* (DCLG: London, March 2012), paras 157 and 184. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf. Last accessed 9 July 2014).

35 Parker notes: 'The emergence of neighbourhood planning ... [is an] approach [that] has been informed by a longer experience of similar efforts and a wider context of a localist policy environment emerging since at least 1991' (Parker, above n. 23, at OP139–140).

36 McAuslan, above n. 27 at 150.

37 Hereinafter NPPF.

38 See NPPF, above n. 34, para. 1.

39 The NPPF sets out a presumption in favour of sustainable development, ensuring the principle is at the policies' backbone. Ibid. at para. 6.

40 Ibid.

decisions’.⁴¹ Furthermore, and in the context of more localised influences, the NPPF also states that:

Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.⁴²

The Coalition’s reforms, therefore, introduce an important new dimension to the existing planning system, setting out key and ‘powerful ... tools for local people to ensure that they get the right types of development for their community’.⁴³ It is important, however, that these are seen within the context of the wider planning framework and take account of national policies as well as broader local concerns and strategies.

Interaction between the community level and both the central and local governmental institutions above is, therefore, crucial – but also potentially problematic for the community-focused motivation behind the reforms. As Parker notes: one ‘possible tension ... is ... the interplay of the bottom-up ideas and preferences that may emerge through [Neighbourhood Planning] processes, with “top-down” policies as set out nationally and in local plans’.⁴⁴ This tension stems, on the one hand, from the desire to foster the community-focused approach to development, central to the government’s agenda; and, on the other hand, the uniformity that can come from nationally set policies and objectives, and local governmental guidance and supervision.

The issue to which the remainder of this article is devoted, then, is the extent to which the relationship between communities and central government and communities and local authorities impacts on the success of the Localism Act’s neighbourhood planning provisions and the community engagement that they are designed to inspire.

THE BIG SOCIETY AND LOCAL COMMUNITIES

Thus far, this article has introduced the Localism Act’s neighbourhood planning provisions, and it has put these in the context of the wider planning framework and the policies that set out the Coalition’s localism agenda and Big Society. Ensuring that ‘people, in their everyday lives, in their homes, in their neighbourhoods, in their workplace ... [could] feel both free and powerful enough to help themselves and their own communities’,⁴⁵ initial thoughts in respect of the new provisions have been fairly positive, with MPs and the government lauding the potential for the reforms to instigate real change. They ‘seem[ed] at least to offer the potential for empowerment and decentralisation, free from overly bureaucratic centralised supervision’.⁴⁶

It is the purpose of this section, however, to delve a little deeper and to analyse the extent to which the provisions actually achieve the community focus that has been so keenly

41 Ibid. at para. 2, citing ss 19(2)(a) and 38(6) of the Planning and Compulsory Purchase Act 2004 and s. 70(2) of the Town and Country Planning Act 1990.

42 Ibid. at para. 184.

43 Ibid. Above n. 23 at OP141.

44 Ibid. at OP141.

45 Above n. 1.

46 Stanton above n. 5 at 144.

envisaged by the Coalition Government. Exploring both the legislative provisions and initial experiences of the powers in practice, it is structured in three parts. The first examines issues of centralism, the second focuses on the relationship between communities and local authorities, whilst the third addresses concerns relating to community engagement.

COMMUNITIES AND CENTRALISM

With past efforts to provide for community development (discussed above) being criticised for the level of central instruction, the Big Society set out to afford local communities greater freedom and power.⁴⁷ This is evident from the broad promotion in government literature of the means through which communities can preserve and develop local areas, improve local public services and take the initiative with local planning decisions.⁴⁸ On closer inspection, however, the Localism Act's neighbourhood planning provisions seem to paint a picture of community-led initiative being encouraged subject constantly to higher approval and supervision. That is, dependent upon and under the ever-watchful eye of the Secretary of State and central government. Indeed, whilst the Act was 'meant to step beyond giving power back to local government ... [introducing] measures ... to push power downwards and outwards to the lowest possible level, including individuals, neighbourhoods ... and communities',⁴⁹ its provisions are littered with requirements that the Secretary of State retain an overriding say on a number of issues which could, in turn, severely limit the way in which communities might seek to use the powers designed for their benefit.

In relation to neighbourhood planning, this issue of centralism is particularly prominent. Indeed, whilst, as Jacobs and Manzi note, 'the notion of localism was a major feature of reforms to the planning system (enabling communities themselves to propose neighbourhood plans)',⁵⁰ there is very much a sense that these changes fall well short of affording local communities the freedom to shape and develop local areas in the way that the Big Society promised.

It was noted, above, that the Localism Act requires all neighbourhood plans to conform to wider strategies and plans, including those set out by a local authority in respect of the larger local area and also those contained in the NPPF set out by central government. From one perspective, this makes perfect sense. There is little point in setting out national and regional policies for development and planning if local communities are free to ignore them and introduce changes that conflict with their objectives. However, this does come at a price, in that it effectively ties the hands of those working at the community level, potentially restricting the freedom of their proposed developments by requiring that they be in accordance with centralised policies and in line with wider plans set out by local authorities. As Parker observes, the '[n]eighbourhood planning [provisions] ... contained in the Localism Act 2011 are ... qualified inasmuch that the "ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area"'.⁵¹

There is a balance to be maintained, therefore, between the need to ensure uniformity of policy and development, and the freedom of the community-led approach that is so

47 See DCLG, nn. 20, 21 and 25.

48 Ibid.

49 See Leyland, above n. 4 at 771.

50 K. Jacobs and T. Manzi, 'New Localism, Old Retrenchment: The "Big Society", Housing Policy and the Politics of Welfare Reform' (2013) 30(1) *Housing, Theory and Society* 29 at 36.

51 Above n. 23 at OP141, citing NPPF, para. 184.

central to the Coalition's localism agenda. These aims may not always be competing; however, communities and local authorities must work together and be mindful of the NPPF to achieve the most utilitarian approach and to minimise the potential for communities to be restricted as regards the form of their desired development in favour of wider considerations and factors.

This demonstrates, then, the extent to which the neighbourhood planning provisions, though introduced on the back of promises to encourage greater neighbourhood input and a more prominent community focus, are punctuated by provisions outlining the need for constant centralised requirements and guidance. Whilst, as David Cameron stated in 2010, the Big Society is supposed to be about changing 'the basic assumption at the heart of government that the way to improve things in society was to micromanage from the centre, from Westminster',⁵² it seems that central government has retained a great deal of supervision and direction over the way in which communities are able to exercise powers initially intended to encourage freedom and autonomy in local development. Indeed, this is not an issue exclusively affecting neighbourhood planning, but is one also evident in respect of the community rights.

With regards to the community right to challenge,⁵³ for instance, though the Localism Act was intended to encourage local community initiative by affording community bodies the opportunity to take over the running of public services, the provisions set out a number of instances where power is retained by central government. In relation to local authorities' consideration of local expressions of interest, for example, the Secretary of State has the ability to specify what an expression of interest should contain, and they can stipulate which services should be excluded from its remit.⁵⁴ It is also incumbent upon local authorities to 'have regard to guidance issued by the Secretary of State',⁵⁵ and most significantly, they can only reject an expression of interest on grounds that are specified by the Secretary of State.⁵⁶ These requirements are quite revealing. Not only do they again effectively tie the hands of local authorities, ensuring that their role is constantly supervised by central government, but they also demand that communities can only take the initiative in terms of taking over local public services that central government deems acceptable and permissible. As Jones and Stewart rightly observe, '[t]he spirit of localism is absent when a local authority is allowed to reject an expression of interest by a voluntary or community body only on grounds to be specified by the Secretary of State ... Localism is again controlled by centralism'.⁵⁷

Lees, discussing the role of localism with regards to environmental regulation and the contaminated land regime, notes that '[t]he high levels of prescription ... "is not necessarily something to be criticised, but it is a subtle fetter on the reality of localised decision-making"'.⁵⁸ The same is true here in respect of the provisions relating to community

52 Above n. 1.

53 The community right to challenge is set out in Pt. 5, Ch. 2 of the Localism Act 2011 and gives local community bodies the opportunity to take over the running of public services from local authorities. The Explanatory Notes state: 'A relevant authority [has a duty] to consider an expression of interest submitted by a voluntary or community body, charity, parish council, or employees of the authority in relation to providing or assisting in providing a service provided by or on behalf of the local authority.' (Explanatory Notes to the Localism Act 2011, para. 219. The notes define a relevant authority as including a county council, a district council or a London Borough Council.)

54 Ibid. at para. 219.

55 Localism Act 2011, s. 85(2).

56 Localism Act 2011, s. 83(11); See Jones and Stewart, above n. 18 at 358.

57 Ibid. Jones and Stewart.

58 See Lees, above n. 11 at 178. She there cites: E. Lees, 'The Contaminated Land Regime: New Guidance and a New Philosophy' (2012) 14 *Environmental Law Review* 267 at 275.

rights and neighbourhood planning. They set out ways in which local people and bodies can ostensibly take the initiative and lead forward local change and development, but on closer inspection, seem to bestow upon the Secretary of State a degree of power and direction, thus imposing a restriction and potential limitation on the way in which communities can lead forward that local change and development. Coining a phrase used in the government's *Localism* paper,⁵⁹ Lees calls this "[g]uided localism" – highly prescriptive processes and goals set against the background of autonomous decision-making⁶⁰ – interestingly, not a concept or approach that is endorsed by the government. The House of Commons Communities and Local Government Select Committee notes that:

Ministers must rein in their interventionist instincts if the Government's localism agenda is to be credible. Central government cannot have it both ways – on the one hand giving local authorities the freedom to make their own choices, and on the other maintaining that only one of those choices is the 'sensible' one ... The concept of 'guided localism' is an unhappy compromise which is neither helpful to local authorities nor as radical as the Government seems content to believe.⁶¹

These comments are telling and, in view of the provisions relating to neighbourhood planning, the 'unhappy compromise' and unhelpfulness of the approach is evident. Whilst they were potentially significant in according local communities freedom to shape local areas and develop neighbourhoods in locally relevant and desired ways, in reality, the degree of prescription that is retained by centralised forces serves to hinder their true potential. As Jones and Stewart note, 'the government's approach fails to recognize that the main barriers to the development of localism lie in central government itself ... [t]he [Localism] Act is based on the assumption that empowering communities and local government requires central-government prescription. ...'⁶² Unless and until these are fully resolved, the benefit that local democracy can bring to processes aimed at community development, such as neighbourhood planning, will not be fully realised.

COMMUNITIES AND LOCAL AUTHORITIES

Concerns relating to the supervision of neighbourhood planning, however, are not restricted to issues of centralism, but are also affected by the relationship between local authorities and communities.

In some respects, local authorities have been the welcome beneficiaries of powers set out by the Localism Act. The general power of competence, for example, empowering local authorities to do anything an individual may do,⁶³ has been praised as encouraging 'a system based less on centralised control'.⁶⁴ With regard to neighbourhood planning, however, it seems that local authorities have effectively been appointed 'administrators'. The Act affords them considerable discretion to supervise and guide the exercise of local powers, the process of neighbourhood planning and, thus, the course of community development. For example, the Act accords local authorities a broad discretion to decide whether a specific area should be designated a neighbourhood forum for inclusion in neighbourhood development plans. The potential consequence of this is that, whilst subject to a degree of decentralisation, some of the rights and powers designed to give

59 See House of Commons Communities and Local Government Committee, above n. 11 at 5.

60 See Lees, above n. 11 at 178.

61 See House of Commons Communities and Local Government Committee, above n. 11 at para. 57.

62 Jones and Stewart, above n. 18 at 355–6.

63 Localism Act 2011, s. 1.

64 A. Bowes and J. Stanton, 'The Localism Act 2011 and the General Power of Competence' (2014) *Public Law* 401.

local communities greater freedom to shape local spaces are to be exercised subject to the approval of local authorities. As with concerns relating to centralism, above, this does make some sense. If local communities are to lead forward local development, then that should complement, not conflict with, wider local issues and plans. At the same time, it is important to maintain a balance and ensure that local authorities do not unnecessarily restrict community-led development.

The potential problems that this could present are demonstrated in *R (Daws Hill Neighbourhood Forum and others) v Wycombe DC*,⁶⁵ where the broad discretion conferred upon local authorities to designate neighbourhood fora was discussed at length. In the case, the Daws Hill Residents' Association had applied to Wycombe District Council for designation as a neighbourhood forum in respect of an area that included two further sites – the RAF Daws Hill site and the Handy Cross Sports Centre site. The council, though designating the Residents' Association as a Neighbourhood Forum, pursuant to sections 61F and 61G of the Town and Country Planning Act 1990, amended by the Localism Act 2011, sought to exclude these two additional sites from that neighbourhood area. The reasons underlying this exclusion were based on concerns that development at these sites would 'have implications that impact upon a wider sphere of influence', with feelings that '[t] here are larger than local impacts and larger "communities of interest"'.⁶⁶

The decision to exclude was challenged by the Daws Hill Neighbourhood Forum through judicial review proceedings on the grounds that 'it ... failed to take key material considerations into account ... acted irrationally ... [and] unlawfully ... contrary to the clear purpose of the 2011 Act'.⁶⁷ This application was rejected on the basis that the 1990 Act conferred on Wycombe District Council a particularly broad discretion, the exercise of which could rest on the particular facts and policy considerations at issue.⁶⁸ Indeed, within this discretion, Supperstone J found that the council had 'had regard to the specific circumstances that existed at the time'.⁶⁹ This was upheld on appeal, though different reasons, not relevant to this discussion, were also considered.

Whilst the decision in *Daws Hill* is not criticised or challenged, the nature of the broad discretion conferred on local authorities by the Localism Act seems to afford them significant scope to supervise and alter the course and nature of neighbourhood development. The concern that this, in turn, presents was reflected in submissions made to the Administrative Court on behalf of Daws Hill Neighbourhood Forum:

(1) The Government enacted the 2011 Act in order that community input into those development proposals which will have a significant impact on that community can be undertaken by way of neighbourhood planning, and through neighbourhood forums, neighbourhood areas, neighbourhood development plans and neighbourhood development orders, thereby empowering neighbourhood forums "to influence the type, design, location and mix of new development" in respect of such proposals. That intention is made abundantly clear both by the Act itself and by the published policy documents.

(2) The council was duty bound to act in accordance with that position, pursuant to its duties not to frustrate the purposes of the 2011 Act ...⁷⁰

65 [2013] EWHC 513 (Admin).

66 Ibid. at para. 28.

67 Ibid. at para. 29.

68 Ibid. at paras. 57 and 58.

69 Ibid. at para. 57.

70 Quoted at ibid. at para. 29.

As *Daws Hill* demonstrates, it will generally be up to the Administrative Court to police the balance between localised action and development and the need for consistency and complementarity with wider objectives and plans; in doing this, it is vital that the underlying rationale at the heart of the reforms be constantly kept in mind and the importance of community-led development valued.

Connected with this and, indeed, as an example of the way in which local authorities could potentially restrict the scope of community-led development, the NPPF sets out a number of specific policies and requirements in relation to housing and affords local planning authorities certain powers and responsibilities in that regard.⁷¹ The Framework provides that local authorities have a duty ‘to boost significantly the supply of housing’, and requires that they have an identified and constantly updated five-year housing supply, with housing requirements set out in adopted Local Plans.⁷² All housing applications must be considered ‘in the context of the [NPPF’s] presumption in favour of sustainable development’, and should serve ‘[t]o deliver a wide choice of high quality homes [with] widen[ed] opportunities for home ownership’.⁷³ In giving local authorities responsibility for housing,⁷⁴ however, there is perhaps a sense that some of the policies at the heart of the NPPF do not sit easily with other reforms introduced by the Coalition that seek to give greater power to communities.

Requiring that councils carry out their responsibilities consistent with the NPPF, in line with the presumption in favour of sustainable development, and constantly mindful of objectively assessed housing market needs, means that it is much harder for communities to affect housing development in their local areas and therefore to have a say in how local spaces are developed. It seems somewhat at odds, therefore, with the motivation behind these reforms and the Coalition’s localism agenda that local authorities retain the monopoly on housing development and the power to push that forward, potentially against the wishes and needs of local communities. Indeed, this is substantiated by the fact that of the neighbourhood plans to have been published thus far, there is a clear concern that the higher direction of housing policy will detract from community-led development. The Tattenhall Neighbourhood Plan explains that:

This plan is not anti-development and the community understands the need to accommodate housing growth. But there is great concern that new development in Tattenhall could erode the very qualities that make the village special if it is not carefully managed in terms of its scale and design. This next layer of growth for the village must create developments of quality which contribute to the character of the village and which provide local benefit. It must be more than an exercise in meeting housing supply “numbers” by the addition of characterless estates on the rural fringes of the village more typical of suburban developments.⁷⁵

In addition to concerns relating to centralism, the manner in which the reforms impact on the relationship between local government and local communities also presents

71 Above n. 34 at Chapter 6.

72 Ibid, at para. 47. (For further information on the five-year housing supply, see: DCLG, *Planning Practice Guidance*, (March 2014) para. 030, reference ID: 3-030-20140306. Available at: <http://planningguidance.planningportal.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/stage-5-final-evidence-base/>. Last accessed 9 July 2014.

73 Ibid. at paras. 49 and 50.

74 As noted by the Planning Advisory Service (Planning Advisory Service, Local Government Association, *Why does my council need a five-year housing land supply?* (26 November 2013). Available at: www.pas.gov.uk/local-planning/-/journal_content/56/332612/3757749/ARTICLE. Last accessed 9 July 2014.

75 Tattenhall and District Neighbourhood Plan 2010–2030, *Sustainable growth for the whole community*, p. 10. Available at: <http://tattenhallpc.co.uk/wp-content/uploads/2013/07/6119-Tattenhall-Neighbourhood-Plan-FINAL-13-28.5.pdf>. Last accessed 9 July 2014.

issues concerning the achievement of community-led development. Whether through its ability to restrict or reject neighbourhood plans or through its responsibility to lead forward housing development in line with centralised objectives, the administrative role accorded to local authorities creates a potential danger that community-led action could be restricted by the need constantly to ensure compliance and consistency with higher authority. Despite the Coalition's clear desire to encourage community-led development, therefore, the reforms and the manner in which they impact on the relationship between communities and local government, present further issues which could prevent this from being achieved successfully in practice.

COMMUNITY ENGAGEMENT

A final issue to consider in respect of neighbourhood planning relates to community engagement. As an issue affecting community-led approaches to development, concern for community engagement is far from new. Returning to the New Deal for Communities, research shows that, in 2008, just 22 per cent of local individuals who had heard of the programme were involved in its regeneration activities.⁷⁶ '[P]artnerships [, it seems, relied] on a relatively small number of community participants ... [there was] a general sense of apathy within communities towards the programme ... [with] 75 per cent of residents not [having] heard of the NDC.'⁷⁷

The value of a community-participative approach to development, however, is widely accepted. The Aarhus Convention stresses that 'public participation in decision-making' is crucial to ensuring 'the right of every person ... to live in an environment adequate to his or her health and well-being',⁷⁸ whilst Baker *et al.* note that 'participation in the decisions which affect one's own life is a central political value of democracy ... the required changes of lifestyle connected with a shift to sustainable development can never be lasting if they are imposed in an authoritarian way'.⁷⁹

On this basis, therefore, in conjunction with efforts to decentralise power, the need for greater engagement was a major impetus behind the Localism Act's neighbourhood planning provisions and the broader Big Society policy. Indeed, the government noted in November 2012 that '[n]eighbourhood planning is a new way for communities to decide the future of the places where they live and work',⁸⁰ with the NPPF adding that it 'gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need'.⁸¹

This section demonstrates, however, that some of the issues relating to citizen engagement, identified above, remain unresolved. The Act, it seems, has done nothing more than merely set out increased ways in which local people can participate, without addressing more

76 DCLG, *Involving local people in regeneration: Evidence from the New Deal for Communities programme* (2010) London: HMSO, 6. (A report written and compiled by the Centre for Regional Economic and Social Research), para. 2.26. Also see: Stanton, above n. 5 at 125–6.

77 See Wright, *et al.*, above n. 6 at 347, as cited in Stanton, above n. 5 at 126.

78 UNECE, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998, Aarhus, Denmark, Art. 1. See also Stanton, above n. 5 at 48–55.

79 See S. Baker, M. Kousis, D. Richardson and S. Young (eds), *The Politics of Sustainable Development: Theory, Policy and Practice within the European Union* (Routledge: London: 1997) 23–24, citing: W. Achterberg, 'Can liberal democracy survive the environmental crisis? Sustainability, liberal neutrality and overlapping consensus' in A Dobson and P Lucardie (eds), *The Politics of Nature: Explorations in Green Political Theory* (Routledge: London, 1993) 81 at 82; both as cited in Stanton, above n. 5 at 51.

80 DCLG, *Neighbourhood planning* (London: DCLG, November 2012), 3. Available at: www.gov.uk/government/publications/neighbourhood-planning. Last accessed 9 July 2014.

81 Above n. 34 at 183.

fundamental concerns relating to engagement with community development. As Stanton notes, '[t]here are genuine concerns ... as to whether the Coalition's community-led approach has succeeded in breaking free from the problems of citizens and community engagement that have perhaps plagued previous attempts at local development'.⁸²

For example, in response to the welcome news, in the spring of 2013, that Eden in Cumbria had successfully voted on a neighbourhood plan, Eric Pickles MP, the Secretary of State for Communities and Local Government, stated that '[t]his really is localism in action and a fantastic result for people in Upper Eden who have worked hard to make sure they are in the driving seat by deciding what's best for their community'.⁸³ Whilst the Localism Act's first outing is notable and worth acknowledging, less was made at the time of the fact that a mere 34% of those eligible actually voted, thus calling into question both the representative nature of the support for these neighbourhood plans, as well as the true extent to which the Coalition's localism agenda is actually empowering citizens in the way envisaged through the Big Society.

Indeed, this is not an isolated occurrence. A neighbourhood plan was approved by referendum in the Cheshire village of Tattenhall in October 2013.⁸⁴ Though proudly boasting the highest turnout to date in respect of local referenda for neighbourhood plans, little over half of Tattenhall's local residents turned out to vote.⁸⁵ Similarly, a neighbourhood plan in Thame, Oxfordshire was approved on the basis of a 39.8% turnout, whilst in Exeter St James, fewer than 21% of local residents turned out.⁸⁶

Though the government promotes the changes to neighbourhood planning as being significant in the manner in which they afford local communities the opportunity to cut through previous bureaucratic process and take the initiative in setting out and leading forward the development of local areas, therefore, it seems that people are voting with their feet. A power such as this, designed as it is to empower and inspire community development, fully dependent on and intended to motivate citizen engagement, will only be successful if a significant number of people are on board and willing to play their part, being engaged with both the aims of a neighbourhood plan and the need and drive for development. Indeed, returning to David Cameron's Big Society speech:

The success of the Big Society will depend on the daily decisions of millions of people – on them giving their time, effort, even money, to causes around them ... [w]e need to create communities with oomph – neighbourhoods who are in charge of their own destiny, who feel if they club together and get involved they can shape the world around them.⁸⁷

Turnouts of no higher than 52%, however, from four independent and separate neighbourhood plans, whilst better in some cases than local elections,⁸⁸ are still revealing and arguably reflective of citizens who are perhaps not fully engaged with the new powers. As

82 Stanton, n. 5 above at 144.

83 Above n. 28.

84 See J. Geoghegan, 'Cheshire neighbourhood plan approved in referendum' *Planning Resource* (25 October 2013). Available at: www.planningresource.co.uk/article/1218181/cheshire-neighbourhood-plan-approved-referendum. Last accessed 10 April 2014.

85 The turnout was just under 52%.

86 See B. Cook, 'Neighbourhood Plans in Devon and Oxfordshire Backed in Referenda' *Planning Resource* (3 May 2013). Available at: www.planningresource.co.uk/article/1181153/neighbourhood-plans-devon-oxfordshire-backed-referenda. Last accessed 10 April 2014.

87 Above n. 1.

88 *The Guardian* reports that the average turnout at local elections in 2012 (excluding London Mayoral elections) was 31.3% (S. Rogers and J. Burn-Murdoch, 'UK election historic turnouts since 1918', *The Guardian*, 16 November 2012).

a consequence, the manner in which they can be used to instigate locally relevant change potentially hinders the vision at the heart of these reforms, and at the heart of the Big Society and the government's agenda.

The Localism Act, therefore, whilst praised for encouraging citizen engagement, has failed to address the issue at a more fundamental level. Considerations underlying *why* citizens are disengaged and disinclined to participate need to be tackled before further reforms simply seek to provide opportunities that only the 'usual suspects' will take up.⁸⁹

CONCLUSION

This article has discussed the Localism Act's neighbourhood planning provisions, introduced alongside the community rights to facilitate and encourage greater community-led and locally relevant development in neighbourhoods across Britain. Taking their place amidst a range of existing planning provisions and procedures, at first glance, the new powers seem to encourage greater community freedom, free from centralised prescription and authority, and provide opportunity for greater community action. Closer inspection and analysis, however, reveal a number of issues relating to centralism, unclear relationships with local authorities and citizen engagement. Though the passage of time will reveal the reality and extent of these concerns, there is very much a sense that the Localism Act and the agenda upon which it is based, fall short of addressing the issues and concerns that have hindered attempts at community development in the past. More needs to be done to ensure that communities can make decisions and take action more freely and issues underlying low levels of citizen engagement need to be understood and addressed before that engagement becomes the basis for fresh initiatives for community development. The Localism Act and the Coalition's localism agenda has shown great promise and is a step in the right direction, however, until these more fundamental issues are addressed the vision of locally relevant and community-led development will remain unfulfilled.

89 This is a term used and a concern discussed in A. Layard, 'Law and Localism: The Case of Multiple Occupancy Housing' (2012) 32(4) *Legal Studies* 551 at 557.